West's CALIFORNIA JURISPRUDENCE 3D

Based on California Statutes and Regulations, and Case Law, State and Federal

VOLUME 58

SPECIFIC PERFORMANCE

to

SUBSCRIPTIONS

THOMSON
WEST

For Customer Assistance Call 1-800-328-4880

Mat #40181275

© 2004 West, a Thomson business

West, a Thomson business, has created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. West is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

For authorization to photocopy, please contact the **Copyright Clearance Center** at 222 Rosewood Drive, Danvers, MA 01923, USA (978) 750-8400; fax (978) 646-8700 or **West's Copyright Services** at 610 Opperman Drive, Eagan, MN 55123, fax (651) 687-7551. Please outline the specific material involved, the number of copies you wish to distribute and the purpose or format of the use.

said.[16] Nor may they alter or otherwise rewrite a statute so as to make it express an intention which does not appear from the language involved.[17] However, if possible significance should be given to every word, phrase, sentence, and part of an act.[18]

§ 118 Consideration of historical background, purpose, and objective

Research References

West's Key Number Digest, Statutes ⇐180 to 186, 217 to 217.4

If the legislative purpose and intent cannot be ascertained from the ordinary and proper meaning of the statutory language itself, the statute may then be read in light of its historical background,[1] in an attempt to ascertain the most reasonable interpretation of the measure.[2] To the end that the legislative intent be correctly ascertained, a statute is to be read in the light of its historical background and evident objective.[3] Thus, where there is doubt as to the legislative intent, recourse thus may be had to the legislative history[4] or purpose underlying its enactment.[5]

As revealed in the legislative history and background for

---

[16]County of Santa Barbara v. Connell, 72 Cal. App. 4th 175, 85 Cal. Rptr. 2d 43 (4th Dist. 1999); People v. Zankich, 20 Cal. App. 3d 971, 98 Cal. Rptr. 387 (2d Dist. 1971); Hennigan v. United Pacific Ins. Co., 53 Cal. App. 3d 1, 125 Cal. Rptr. 408 (3d Dist. 1975).

[17]§ 96.

[18]People v. Cruz, 13 Cal. 4th 764, 55 Cal. Rptr. 2d 117, 919 P.2d 731 (1996); Piscioneri v. City of Ontario, 95 Cal. App. 4th 1037, 116 Cal. Rptr. 2d 38 (4th Dist. 2002); Cabrini Villas Homeowners Ass'n v. Haghverdian, 111 Cal. App. 4th 683, 4 Cal. Rptr. 3d 192 (2d Dist. 2003).

[Section 118]

[1]In re Ryan's Estate, 21 Cal. 2d 498, 133 P.2d 626 (1943); People v. Mel Mack Co., 53 Cal. App. 3d 621, 126 Cal. Rptr. 505 (4th Dist. 1975).

[2]Delaney v. Baker, 20 Cal. 4th 23, 82 Cal. Rptr. 2d 610, 971 P.2d 986 (1999).

[3]H. S. Mann Corp. v. Moody, 144 Cal. App. 2d 310, 301 P.2d 28 (2d Dist. 1956).

[4]Estate of Griswold, 25 Cal. 4th 904, 108 Cal. Rptr. 2d 165, 24 P.3d 1191 (2001); County of Alameda v. Carleson, 5 Cal. 3d 730, 97 Cal. Rptr. 385, 488 P.2d 953 (1971); Friends of Westhaven & Trinidad v. County of Humboldt, 107 Cal. App. 4th 878, 132 Cal. Rptr. 2d 561 (1st Dist. 2003).

[5]In re J.W., 29 Cal. 4th 200, 126 Cal. Rptr. 2d 897, 57 P.3d 363 (2002); Allen v. Sully-Miller Contracting Co., 28 Cal. 4th 222, 120 Cal. Rptr. 2d

the enactment of the statute, the purpose[6] or object[7] sought to be accomplished,[8] as well as the evil to be prevented,[9] are important factors in ascertaining the legislative intent.[10] Regard is to be had not so much for the exact statutory phraseology as to the general tenor and scope of the entire scheme embodied in the statute.[11] Once the legislature has expressly declared its intent, the courts must accept that declaration,[12] unless the statute is challenged as having departed, in its scope and effect, from the declared legislative design in contravention of constitutional provisions, in which event it is said that the courts must inquire into the real rather than ostensible purpose.[13]

◆ **Observation:** In construing a statute, a court must determine the drafter's intent at the time of enactment; thus, for example, where a statute has not been amended

795, 47 P.3d 639 (2002); Smith v. Rhea, 72 Cal. App. 3d 361, 140 Cal. Rptr. 116 (4th Dist. 1977).

As to the use of extrinsic aids in the interpretation and construction of statutes, see §§ 104, 125 to 127, 177 to 190.

[6]Flannery v. Prentice, 26 Cal. 4th 572, 110 Cal. Rptr. 2d 809, 28 P.3d 860 (2001); California Drive-In Restaurant Ass'n v. Clark, 22 Cal. 2d 287, 140 P.2d 657, 147 A.L.R. 1028 (1943); Gage v. Jordan, 23 Cal. 2d 794, 147 P.2d 387 (1944).

[7]City and County of San Francisco v. San Mateo County, 17 Cal. 2d 814, 112 P.2d 595 (1941); Gage v. Jordan, 23 Cal. 2d 794, 147 P.2d 387 (1944); Blumenfeld v. San Francisco Bay Conservation etc. Com., 43 Cal. App. 3d 50, 117 Cal. Rptr. 327 (1st Dist. 1974).

[8]Rock Creek Water Dist. v. Calaveras County, 29 Cal. 2d 7, 172 P.2d 863 (1946); Freedland v. Greco, 45 Cal. 2d 462, 289 P.2d 463 (1955).

[9]In re Luke W., 88 Cal. App. 4th 650, 105 Cal. Rptr. 2d 905 (1st Dist. 2001); Bravo v. Ismaj, 99 Cal. App. 4th 211, 120 Cal. Rptr. 2d 879 (4th Dist. 2002), review denied, (Aug. 14, 2002); Blumenfeld v. San Francisco Bay Conservation etc. Com., 43 Cal. App. 3d 50, 117 Cal. Rptr. 327 (1st Dist. 1974).

[10]People v. Carroll, 1 Cal. 3d 581, 83 Cal. Rptr. 176, 463 P.2d 400 (1970); People v. Alday, 10 Cal. 3d 392, 110 Cal. Rptr. 617, 515 P.2d 1169 (1973).

[11]Los Angeles County v. Frisbie, 19 Cal. 2d 634, 122 P.2d 526 (1942); City of Los Angeles v. Barrett, 153 Cal. App. 2d 776, 315 P.2d 503 (2d Dist. 1957); Lara v. Board of Supervisors, 59 Cal. App. 3d 399, 130 Cal. Rptr. 668 (5th Dist. 1976).

[12]Tyrone v. Kelley, 9 Cal. 3d 1, 106 Cal. Rptr. 761, 507 P.2d 65 (1973).

[13]Coulter v. Pool, 187 Cal. 181, 201 P. 120 (1921).

the enactment of the statute, the purpose[6] or object[7] sought to be accomplished,[8] as well as the evil to be prevented,[9] are important factors in ascertaining the legislative intent.[10] Regard is to be had not so much for the exact statutory phraseology as to the general tenor and scope of the entire scheme embodied in the statute.[11] Once the legislature has expressly declared its intent, the courts must accept that declaration,[12] unless the statute is challenged as having departed, in its scope and effect, from the declared legislative design in contravention of constitutional provisions, in which event it is said that the courts must inquire into the real rather than ostensible purpose.[13]

◆ **Observation:** In construing a statute, a court must determine the drafter's intent at the time of enactment; thus, for example, where a statute has not been amended

795, 47 P.3d 639 (2002); Smith v. Rhea, 72 Cal. App. 3d 361, 140 Cal. Rptr. 116 (4th Dist. 1977).

As to the use of extrinsic aids in the interpretation and construction of statutes, see §§ 104, 125 to 127, 177 to 190.

[6]Flannery v. Prentice, 26 Cal. 4th 572, 110 Cal. Rptr. 2d 809, 28 P.3d 860 (2001); California Drive-In Restaurant Ass'n v. Clark, 22 Cal. 2d 287, 140 P.2d 657, 147 A.L.R. 1028 (1943); Gage v. Jordan, 23 Cal. 2d 794, 147 P.2d 387 (1944).

[7]City and County of San Francisco v. San Mateo County, 17 Cal. 2d 814, 112 P.2d 595 (1941); Gage v. Jordan, 23 Cal. 2d 794, 147 P.2d 387 (1944); Blumenfeld v. San Francisco Bay Conservation etc. Com., 43 Cal. App. 3d 50, 117 Cal. Rptr. 327 (1st Dist. 1974).

[8]Rock Creek Water Dist. v. Calaveras County, 29 Cal. 2d 7, 172 P.2d 863 (1946); Freedland v. Greco, 45 Cal. 2d 462, 289 P.2d 463 (1955).

[9]In re Luke W., 88 Cal. App. 4th 650, 105 Cal. Rptr. 2d 905 (1st Dist. 2001); Bravo v. Ismaj, 99 Cal. App. 4th 211, 120 Cal. Rptr. 2d 879 (4th Dist. 2002), review denied, (Aug. 14, 2002); Blumenfeld v. San Francisco Bay Conservation etc. Com., 43 Cal. App. 3d 50, 117 Cal. Rptr. 327 (1st Dist. 1974).

[10]People v. Carroll, 1 Cal. 3d 581, 83 Cal. Rptr. 176, 463 P.2d 400 (1970); People v. Alday, 10 Cal. 3d 392, 110 Cal. Rptr. 617, 515 P.2d 1169 (1973).

[11]Los Angeles County v. Frisbie, 19 Cal. 2d 634, 122 P.2d 526 (1942); City of Los Angeles v. Barrett, 153 Cal. App. 2d 776, 315 P.2d 503 (2d Dist. 1957); Lara v. Board of Supervisors, 59 Cal. App. 3d 399, 130 Cal. Rptr. 668 (5th Dist. 1976).

[12]Tyrone v. Kelley, 9 Cal. 3d 1, 106 Cal. Rptr. 761, 507 P.2d 65 (1973).

[13]Coulter v. Pool, 187 Cal. 181, 201 P. 120 (1921).

in more than a century the court will still consider the legislative intent at the time the provision was enacted.[14]

b. Construction of Statute in Context

Summary: Legislative intent should be gathered from the whole act rather than from isolated parts or words (§ 119). A statute must be construed so as to harmonize its various parts or sections, without doing violence to the language, spirit, or purpose of the act (§ 120). If the provisions of any code title conflict with or contravene the provisions of another title, the provisions of each prevail on all matters and questions arising out of the subject matter of that title (§ 121). A general statutory provision is controlled by one that is special, the latter being treated as an exception to the former (§ 122). A statute that is modeled on another statute and shares the same legislative purpose is in pari materia with the other, and should be interpreted consistently to effectuate the legislative intent (§ 123). Even though one statute or act is specific and the other general, if a court can reasonably harmonize two statutes dealing with the same subject, the court must give concurrent effect to both (§ 124).

§ 119 Construction as a whole generally

Research References

West's Key Number Digest, Statutes ⇐205 to 208

Legislative intent should be gathered from the whole act rather than from isolated parts or words.[1] Courts should thus construe all provisions of a statute together,[2] significance being given when possible to each word, phrase,

---

[14]People v. Williams, 26 Cal. 4th 779, 111 Cal. Rptr. 2d 114, 29 P.3d 197 (2001) (penal provision adopted in 1872).

[Section 119]

[1]People v. Hammer, 30 Cal. 4th 756, 134 Cal. Rptr. 2d 590, 69 P.3d 486 (2003); Briggs v. Eden Council for Hope & Opportunity, 19 Cal. 4th 1106, 81 Cal. Rptr. 2d 471, 969 P.2d 564 (1999); Teresa J. v. Superior Court, 102 Cal. App. 4th 366, 125 Cal. Rptr. 2d 506 (3d Dist. 2002).

[2]Moyer v. Workmen's Comp. Appeals Bd., 10 Cal. 3d 222, 110 Cal. Rptr. 144, 514 P.2d 1224 (1973); Turner v. Board of Trustees, 16 Cal. 3d 818, 129 Cal. Rptr. 443, 548 P.2d 1115 (1976); DuBois v. Workers' Comp. Appeals Bd., 5 Cal. 4th 382, 20 Cal. Rptr. 2d 523, 853 P.2d 978 (1993).

sentence, and part of the act in pursuance of the legislative purpose,[3] though the meaning of a statute may not be determined from a single word or sentence,[4] its words to be construed in context,[5] keeping in mind the nature and obvious purpose of the statute where they appear[6] so as to make sense of the entire statutory scheme.[7] Thus, whenever possible, effect should be given to the statute as a whole, and to its every word and clause, so that no part or provision will be useless or meaningless,[8] none of its language rendered surplusage;[9] the same rule applies in construing a particular section of a statute when codified.[10]

The courts presume that every word, phrase, and provi-

---

[3]Briggs v. Eden Council for Hope & Opportunity, 19 Cal. 4th 1106, 81 Cal. Rptr. 2d 471, 969 P.2d 564 (1999); Garcia v. McCutchen, 16 Cal. 4th 469, 66 Cal. Rptr. 2d 319, 940 P.2d 906 (1997).

[4]People v. King, 5 Cal. 4th 59, 19 Cal. Rptr. 2d 233, 851 P.2d 27 (1993); Farm Sanctuary, Inc., v. Department of Food & Agriculture, 63 Cal. App. 4th 495, 74 Cal. Rptr. 2d 75 (2d Dist. 1998); Slatkin v. White, 102 Cal. App. 4th 963, 126 Cal. Rptr. 2d 54 (1st Dist. 2002), review denied, (Jan. 15, 2003).

[5]People v. Thomas, 4 Cal. 4th 206, 14 Cal. Rptr. 2d 174, 841 P.2d 159 (1992); Seidler v. Municipal Court, 12 Cal. App. 4th 1229, 16 Cal. Rptr. 2d 90 (2d Dist. 1993).

[6]Los Angeles Times v. Alameda Corridor Transp. Authority, 88 Cal. App. 4th 1381, 107 Cal. Rptr. 2d 29 (2d Dist. 2001); Israni v. Superior Court, 88 Cal. App. 4th 621, 106 Cal. Rptr. 2d 48 (4th Dist. 2001); Lewis C. Nelson & Sons, Inc. v. Clovis Unified School Dist., 90 Cal. App. 4th 64, 108 Cal. Rptr. 2d 715, 154 Ed. Law Rep. 905 (5th Dist. 2001), as modified, (June 27, 2001).

[7]Flannery v. Prentice, 26 Cal. 4th 572, 110 Cal. Rptr. 2d 809, 28 P.3d 860 (2001); Carrisales v. Department of Corrections, 21 Cal. 4th 1132, 90 Cal. Rptr. 2d 804, 988 P.2d 1083 (1999), Summarized in, 2 WCAB Rptr. 10,6, 1999 WL 33308181 (Cal. 1999); Stecks v. Young, 38 Cal. App. 4th 365, 45 Cal. Rptr. 2d 475 (4th Dist. 1995).

[8]Los Angeles County v. Frisbie, 19 Cal. 2d 634, 122 P.2d 526 (1942); Gangwish v. Workers' Compensation Appeals Bd., 89 Cal. App. 4th 1284, 108 Cal. Rptr. 2d 1 (2d Dist. 2001); Stecks v. Young, 38 Cal. App. 4th 365, 45 Cal. Rptr. 2d 475 (4th Dist. 1995); People v. Gnass, 101 Cal. App. 4th 1271, 125 Cal. Rptr. 2d 225 (5th Dist. 2002).

[9]Briggs v. Eden Council for Hope & Opportunity, 19 Cal. 4th 1106, 81 Cal. Rptr. 2d 471, 969 P.2d 564 (1999); Garcia v. McCutchen, 16 Cal. 4th 469, 66 Cal. Rptr. 2d 319, 940 P.2d 906 (1997); City of San Jose v. Superior Court, 5 Cal. 4th 47, 19 Cal. Rptr. 2d 73, 850 P.2d 621 (1993).

[10]Dempsey v. Market Street Ry. Co., 23 Cal. 2d 110, 142 P.2d 929 (1943); Zorro Inv. Co. v. Great Pacific Securities Corp., 69 Cal. App. 3d 907, 138 Cal. Rptr. 410 (4th Dist. 1977).

sion of a statute was intended to have some meaning and perform some useful function,[11] and this presumption applies with equal force to words added by amendment.[12] The courts must, for example, avoid a statutory interpretation which would recognize a particular right while denying a remedy.[13] A construction implying that words were used in vain should be avoided.[14] These principles apply with added emphasis to an amendatory statute enacted to abolish an evil or improve a practice prevailing under the earlier statute.[15]

§ 120 Construction toward harmonizing

Research References

West's Key Number Digest, Statutes ⇐205, 207

A statute must be construed so as to harmonize its various parts or sections,[1] without doing violence to the language, spirit, or purpose of the act.[2] Statutes must be harmonized, both internally and with each other, to the extent possible;[3] they will not be construed in such a way as to render related

---

[11]Clements v. T. R. Bechtel Co., 43 Cal. 2d 227, 273 P.2d 5 (1954); International Assn. of Fire Fighters Union v. City of Pleasanton, 56 Cal. App. 3d 959, 129 Cal. Rptr. 68 (1st Dist. 1976); Mahdavi v. Fair Employment Practice Com., 67 Cal. App. 3d 326, 136 Cal. Rptr. 421 (1st Dist. 1977).

[12]People v. Kozden, 36 Cal. App. 3d 918, 111 Cal. Rptr. 826 (4th Dist. 1974).

[13]Bermite Powder Co. v. Franchise Tax Bd. of Cal., 38 Cal. 2d 700, 242 P.2d 9 (1952); Board of Retirement v. Terry, 40 Cal. App. 3d 1091, 115 Cal. Rptr. 718 (5th Dist. 1974).

[14]Prager v. Isreal, 15 Cal. 2d 89, 98 P.2d 729 (1940); Tidewater Oil Co. v. Workers' Comp. Appeals Bd., 67 Cal. App. 3d 950, 137 Cal. Rptr. 36 (1st Dist. 1977).

[15]Thomas v. Driscoll, 42 Cal. App. 2d 23, 108 P.2d 43 (2d Dist. 1940).

[Section 120]

[1]People v. Murphy, 25 Cal. 4th 136, 105 Cal. Rptr. 2d 387, 19 P.3d 1129 (2001); Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd., 19 Cal. 4th 1182, 81 Cal. Rptr. 2d 521, 969 P.2d 613 (1999); Russell v. Stanford University Hospital, 15 Cal. 4th 783, 64 Cal. Rptr. 2d 97, 937 P.2d 640 (1997).

[2]People v. Garcia, 21 Cal. 4th 1, 87 Cal. Rptr. 2d 114, 980 P.2d 829 (1999); Russell v. Stanford University Hospital, 15 Cal. 4th 783, 64 Cal. Rptr. 2d 97, 937 P.2d 640 (1997); Viking Ins. Co. v. State Farm Mut. Auto. Ins. Co., 17 Cal. App. 4th 540, 21 Cal. Rptr. 2d 590 (3d Dist. 1993).

[3]Barker v. Brown & Williamson Tobacco Corp., 88 Cal. App. 4th 42, 105 Cal. Rptr. 2d 531 (4th Dist. 2001); Cabrini Villas Homeowners Ass'n

provisions nugatory.[4] Thus, wherever possible, seemingly conflicting or inconsistent provisions should be reconciled, to avoid the declaration of an irreconcilable conflict[5] and to carry out the fundamental legislative purpose as gathered from the whole act.[6] The process of harmonizing begins with by considering the particular clause or section in the context of the statutory framework as a whole.[7] A construction that makes sense of an apparent inconsistency is to be preferred to one that renders statutory language useless or meaningless.[8]

To achieve the objective of harmonizing the various parts of a statute, the words or clauses may be enlarged or restricted by other words or clauses in the same act.[9] Where there are conflicting provisions, the one susceptible of only one meaning will control a provision susceptible of two meanings, if the statute can thereby be made harmonious.[10] Where a statute is subject to two or more reasonable interpreta-

---

v. Haghverdian, 111 Cal. App. 4th 683, 4 Cal. Rptr. 3d 192 (2d Dist. 2003); People v. Beaumont Inv., Ltd., 111 Cal. App. 4th 102, 3 Cal. Rptr. 3d 429 (6th Dist. 2003), as modified on denial of reh'g, (Sept. 9, 2003) and review denied, (Nov. 25, 2003).

[4]Mocek v. Alfa Leisure, Inc., 114 Cal. App. 4th 402, 7 Cal. Rptr. 3d 546, 52 U.C.C. Rep. Serv. 2d 414 (4th Dist. 2003), review denied, (Apr. 14, 2004); People ex rel. Allstate Ins. Co. v. Weitzman, 107 Cal. App. 4th 534, 132 Cal. Rptr. 2d 165 (2d Dist. 2003), as modified on denial of reh'g, (Apr. 24, 2003) and review denied, (June 11, 2003).

[5]Russell v. Stanford University Hospital, 15 Cal. 4th 783, 64 Cal. Rptr. 2d 97, 937 P.2d 640 (1997); Long Beach City School Dist. v. Payne, 219 Cal. 598, 28 P.2d 663 (1933); Wemyss v. Superior Court in and for Alameda County, 38 Cal. 2d 616, 241 P.2d 525 (1952).

[6]Viking Ins. Co. v. State Farm Mut. Auto. Ins. Co., 17 Cal. App. 4th 540, 21 Cal. Rptr. 2d 590 (3d Dist. 1993); Earl Ranch, Limited, v. Industrial Accident Commission, 4 Cal. 2d 767, 53 P.2d 154 (1935).

[7]People v. Garrett, 92 Cal. App. 4th 1417, 112 Cal. Rptr. 2d 643 (6th Dist. 2001), review denied, (Jan. 29, 2002); Shea Homes Ltd. Partnership v. County of Alameda, 110 Cal. App. 4th 1246, 2 Cal. Rptr. 3d 739 (1st Dist. 2003), review denied, (Oct. 29, 2003); Fenn v. Sherriff, 109 Cal. App. 4th 1466, 1 Cal. Rptr. 3d 185 (3d Dist. 2003), review denied, (Oct. 15, 2003).

[8]Viking Ins. Co. v. State Farm Mut. Auto. Ins. Co., 17 Cal. App. 4th 540, 21 Cal. Rptr. 2d 590 (3d Dist. 1993).

[9]People v. Pereles, 125 Cal. App. Supp. 787, 12 P.2d 1093 (App. Dep't Super. Ct. 1932); People v. Bratis, 73 Cal. App. 3d 751, 141 Cal. Rptr. 45 (1st Dist. 1977).

[10]People v. Moroney, 24 Cal. 2d 638, 150 P.2d 888 (1944).

tions, that interpretation which will harmonize rather than conflict with other provisions of the act should be adopted.[11] Where different words or phrases are used in the same connection in different parts of a statute, it is presumed that the legislature intended a different meaning.[12]

If conflicting statutes cannot be reconciled, later enactments supersede earlier ones,[13] and in the situation of irreconcilable conflict between various provisions of the same statute, the later provision in point of position normally controls the earlier, even though they were both passed at the same time.[14] The rule that the later provision in point of position controls the earlier is merely a rule of necessity and ought not to be given application unless it is made clearly to appear that an irreconcilable conflict between the earlier and the later provisions exist.[15]

§ 121 Construction of conflicting code provisions

Research References

West's Key Number Digest, Statutes ⇐205, 207

If the provisions of any code title conflict with or contravene the provisions of another title, the provisions of each prevail on all matters and questions arising out of the subject matter of that title.[1] If the provisions of any chapter conflict with or contravene those of another chapter of the same title, the provisions of each chapter prevail on all matters and questions arising out of the subject matter of that chapter.[2] So, too, if the provisions of any article conflict with or contravene the provisions of another article of the same chapter, the

---

[11]People v. Kuhn, 216 Cal. App. 2d 695, 31 Cal. Rptr. 253 (4th Dist. 1963).

[12]Briggs v. Eden Council for Hope & Opportunity, 19 Cal. 4th 1106, 81 Cal. Rptr. 2d 471, 969 P.2d 564 (1999).

[13]People v. Moody, 96 Cal. App. 4th 987, 117 Cal. Rptr. 2d 527 (3d Dist. 2002), review denied, (May 15, 2002).

[14]Hartford Acc. & Indem. Co. v. City of Tulare, 30 Cal. 2d 832, 186 P.2d 121 (1947); People v. Kuhn, 216 Cal. App. 2d 695, 31 Cal. Rptr. 253 (4th Dist. 1963).

[15]In re Harrison's Estate, 110 Cal. App. 2d 717, 243 P.2d 528 (1st Dist. 1952).

[Section 121]

[1]Civ. Code, § 23.3.

[2]Civ. Code, § 23.4.

provisions of each article prevail on all matters and questions arising out of the subject matter of that article.[3] In case of conflict between different sections of the same chapter or article, the provisions of the section last in numerical order prevail, unless such a construction is inconsistent with the meaning of the chapter or article.[4]

§ 122 Construing general and special provisions generally

Research References
West's Key Number Digest, Statutes ⚖205, 207

Generally, a general statutory provision is controlled by one that is special, the latter being treated as an exception to the former.[1] Thus, a specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates. This principle applies whether the specific provision was passed before or after the general enactment.[2] However, if possible, effect should be given to both general and special provisions of a statute,[3] and the principle that a specific statute prevails over a general one applies only when two statutes cannot be reconciled.[4] However, it is preferable to treat a special statutory provi-

[3]Civ. Code, § 23.5.

[4]Civ. Code, § 23.6.

[Section 122]

[1]People v. Superior Court, 28 Cal. 4th 798, 123 Cal. Rptr. 2d 31, 50 P.3d 743 (2002); Miller v. Superior Court, 21 Cal. 4th 883, 89 Cal. Rptr. 2d 834, 986 P.2d 170 (1999).

[2]Miller v. Superior Court, 21 Cal. 4th 883, 89 Cal. Rptr. 2d 834, 986 P.2d 170 (1999).

[3]Long Beach City School Dist. v. Payne, 219 Cal. 598, 28 P.2d 663 (1933).

[4]Garcia v. McCutchen, 16 Cal. 4th 469, 66 Cal. Rptr. 2d 319, 940 P.2d 906 (1997); People v. Coronado, 12 Cal. 4th 145, 48 Cal. Rptr. 2d 77, 906 P.2d 1232 (1995); In re Ricardo A., 32 Cal. App. 4th 1190, 38 Cal. Rptr. 2d 586 (4th Dist. 1995).

As to construction when two or more statutes are in regard to the same subject, see § 123.

sion as an exception to a general provision rather than as a replacement for the general provision.[5]

§ 123 Construing provisions governing same subject; statutes in pari materia

Research References

West's Key Number Digest, Statutes ⇐205, 207, 223.2 to 223.2(35)

A statute that is modeled on another statute and shares the same legislative purpose is in pari materia with the other, and should be interpreted consistently to effectuate the legislative intent.[1] The courts must construe such similar statutes, that is, those in pari materia, to achieve a uniform and consistent legislative purpose,[2] in the context of the entire statutory scheme.[3] Moreover, if a court can reasonably harmonize two statutes dealing with the same subject, the court must give concurrent effect to both.[4] This is consistent with the general principle of construction for ascertaining legislative intent, such that the courts should construe a statute with reference to the whole system of law of which it is a part,[5] so that all may be harmonized and

---

[5]Medical Bd. of California v. Superior Court, 88 Cal. App. 4th 1001, 106 Cal. Rptr. 2d 381 (3d Dist. 2001).

[Section 123]

[1]American Airlines, Inc. v. County of San Mateo, 12 Cal. 4th 1110, 51 Cal. Rptr. 2d 251, 912 P.2d 1198 (1996); Medical Bd. of California v. Superior Court, 88 Cal. App. 4th 1001, 106 Cal. Rptr. 2d 381 (3d Dist. 2001).

[2]Fidelity Creditor Service, Inc. v. Browne, 89 Cal. App. 4th 195, 106 Cal. Rptr. 2d 854 (2d Dist. 2001).

[3]People v. Hong, 64 Cal. App. 4th 1071, 76 Cal. Rptr. 2d 23 (2d Dist. 1998); O'Brien v. Dudenhoeffer, 16 Cal. App. 4th 327, 19 Cal. Rptr. 2d 826 (2d Dist. 1993); Piscioneri v. City of Ontario, 95 Cal. App. 4th 1037, 116 Cal. Rptr. 2d 38 (4th Dist. 2002).

[4]Garcia v. McCutchen, 16 Cal. 4th 469, 66 Cal. Rptr. 2d 319, 940 P.2d 906 (1997).

[5]Merrill v. Department of Motor Vehicles, 71 Cal. 2d 907, 80 Cal. Rptr. 39, 458 P.2d 33 (1969); Clean Air Constituency v. California State Air Resources Bd., 11 Cal. 3d 801, 114 Cal. Rptr. 577, 523 P.2d 617 (1974); People ex rel. Younger v. Superior Court, 16 Cal. 3d 30, 127 Cal. Rptr. 122, 544 P.2d 1322 (1976).

have effect.[6] Thus, in the construction of a particular statute, or in the interpretation of any of its provisions, all acts relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, and should be construed together if they harmonize and achieve a uniform and consistent legislative purpose.[7]

Accordingly, in the construction of a particular statute or of any of its provisions, all acts having the same general purpose[8] or relating to the same subject should be read together as if one law, and harmonized if possible, even though they may have been passed at different times,[9] and regardless of the fact that one of them may deal specifically and in greater detail with a particular subject while the others do not.[10] Similarly, after codification, provisions of the same code relating to the same subject matter should be construed together as one act, harmonizing apparent conflicts when possible,[11] so all may stand.[12]

◆ **Illustration:** To understand the intended meaning of a statutory phrase, the courts may consider use of the same or similar language in other statutes, because simi-

---

[6]Russell v. Stanford University Hospital, 15 Cal. 4th 783, 64 Cal. Rptr. 2d 97, 937 P.2d 640 (1997); Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd., 19 Cal. 4th 1182, 81 Cal. Rptr. 2d 521, 969 P.2d 613 (1999); Stafford v. Los Angeles County E. R. Board, 42 Cal. 2d 795, 270 P.2d 12 (1954).

[7]Isobe v. Unemployment Ins. Appeals Bd., 12 Cal. 3d 584, 116 Cal. Rptr. 376, 526 P.2d 528 (1974); Kendall-Brief Co. v. Superior Court, 60 Cal. App. 3d 462, 131 Cal. Rptr. 515 (4th Dist. 1976).

[8]Isobe v. Unemployment Ins. Appeals Bd., 12 Cal. 3d 584, 116 Cal. Rptr. 376, 526 P.2d 528 (1974); Kendall-Brief Co. v. Superior Court, 60 Cal. App. 3d 462, 131 Cal. Rptr. 515 (4th Dist. 1976).

[9]In re Wright's Estate, 98 Cal. App. 633, 277 P. 372 (1st Dist. 1929); Kahn v. Kahn, 68 Cal. App. 3d 372, 137 Cal. Rptr. 332 (1st Dist. 1977).

[10]Pierce v. Riley, 21 Cal. App. 2d 513, 70 P.2d 206 (3d Dist. 1937); Western Mobilehome Assn. v. County of San Diego, 16 Cal. App. 3d 941, 94 Cal. Rptr. 504 (4th Dist. 1971); Natural Resources Defense Council, Inc. v. Arcata Nat. Corp., 59 Cal. App. 3d 959, 131 Cal. Rptr. 172 (1st Dist. 1976).

[11]Caminetti v. Superior Court in and for City and County of San Francisco, 16 Cal. 2d 838, 108 P.2d 911 (1941); Los Angeles County v. Frisbie, 19 Cal. 2d 634, 122 P.2d 526 (1942); In re Stevens' Estate, 27 Cal. 2d 108, 162 P.2d 918 (1945); People v. Trieber, 28 Cal. 2d 657, 171 P.2d 1 (1946).

[12]Rose v. State, 19 Cal. 2d 713, 123 P.2d 505 (1942).

lar words or phrases in statutes in pari materia, that is, dealing with the same subject matter, ordinarily will be given the same interpretation.[13]

This same principle applies although the apparent inconsistencies may appear in separate codes,[14] or within the framework of a single code to which new but allegedly inconsistent provisions have been added by the legislature,[15] since for purposes of statutory construction the codes are regarded as blending into each other and constituting but a single statute.[16] Even where in some particulars the provisions are apparently in conflict, the seeming inconsistency should be reconciled if possible.[17]

If two acts on the same subject cannot be so reconciled that both can stand together, the later will prevail over the earlier,[18] especially if the later one is applicable only to a particular subject.[19] Where a statute, with reference to one subject, contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the other statute.[20]

---

[13]In re Do Kyung K., 88 Cal. App. 4th 583, 106 Cal. Rptr. 2d 31, 152 Ed. Law Rep. 725 (6th Dist. 2001).

[14]Sacramento Newspaper Guild v. Sacramento County Bd. of Sup'rs, 263 Cal. App. 2d 41, 69 Cal. Rptr. 480 (3d Dist. 1968); Pacific Motor Transport Co. v. State Bd. of Equalization, 28 Cal. App. 3d 230, 104 Cal. Rptr. 558 (1st Dist. 1972).

[15]Ritter v. Technicolor Corp., 27 Cal. App. 3d 152, 103 Cal. Rptr. 686 (1st Dist. 1972).

[16]Pesce v. Department of Alcoholic Beverage Control, 51 Cal. 2d 310, 333 P.2d 15 (1958).

[17]Southern Pac. Co. v. Railroad Commission of Cal., 13 Cal. 2d 89, 87 P.2d 1055 (1939); People v. Zankich, 20 Cal. App. 3d 971, 98 Cal. Rptr. 387 (2d Dist. 1971); Natural Resources Defense Council, Inc. v. Arcata Nat. Corp., 59 Cal. App. 3d 959, 131 Cal. Rptr. 172 (1st Dist. 1976).

[18]Fuentes v. Workers' Comp. Appeals Bd., 16 Cal. 3d 1, 128 Cal. Rptr. 673, 547 P.2d 449 (1976); Western Mobilehome Assn. v. County of San Diego, 16 Cal. App. 3d 941, 94 Cal. Rptr. 504 (4th Dist. 1971).

[19]Coker v. Superior Court in and for Santa Barbara County, 70 Cal. App. 2d 199, 160 P.2d 885 (2d Dist. 1945).

[20]In re Antonio F., 98 Cal. App. 4th 1227, 120 Cal. Rptr. 2d 325 (4th Dist. 2002); People v. Franz, 88 Cal. App. 4th 1426, 106 Cal. Rptr. 2d 773 (3d Dist. 2001); City of Dublin v. County of Alameda, 14 Cal. App. 4th

provision of the Uniform Commercial Code, will also be followed by the courts when construing the related statutory provision, even though an official comment does not constitute part of a statute. However, the comment must be a reasonable application of the statute consistent with its purpose.[15]

§ 179 Unpassed bills

Research References

West's Key Number Digest, Statutes ⇐214, 215

Bills that are not passed have little value as evidence of legislative intent,[1] and provisions contained within unpassed omnibus bills are even less reliable indicants of legislative intent.[2] In construing statutes, very limited guidance can be drawn from the fact that the legislature has not enacted a particular proposed amendment to an existing statutory scheme.[3]

However, the legislature's omission, from the final version of a statute, of a provision that had been included in an earlier version constitutes strong evidence that the act as adopted should not be construed to incorporate the original provision.[4] The rejection by the legislature of a specific provision contained in an act as originally introduced is most

---

(1st Dist. 1972); Palmer v. Agee, 87 Cal. App. 3d 377, 150 Cal. Rptr. 841 (4th Dist. 1978).

[15]Shea-Kaiser-Lockheed-Healy, 73 Cal. App. 3d 679, 140 Cal. Rptr. 884, 22 U.C.C. Rep. Serv. 607 (2d Dist. 1977).

[Section 179]

[1]Santa Clara County Local Transportation Authority v. Guardino, 11 Cal. 4th 220, 12 Cal. 4th 344e, 45 Cal. Rptr. 2d 207, 902 P.2d 225 (1995), as modified on denial of reh'g, (Dec. 14, 1995); People v. Sparks, 28 Cal. 4th 71, 120 Cal. Rptr. 2d 508, 47 P.3d 289 (2002), as modified, (June 19, 2002); Grupe Development Co. v. Superior Court, 4 Cal. 4th 911, 16 Cal. Rptr. 2d 226, 844 P.2d 545, 80 Ed. Law Rep. 282 (1993).

[2]People v. Sparks, 28 Cal. 4th 71, 120 Cal. Rptr. 2d 508, 47 P.3d 289 (2002), as modified, (June 19, 2002).

[3]Grupe Development Co. v. Superior Court, 4 Cal. 4th 911, 16 Cal. Rptr. 2d 226, 844 P.2d 545, 80 Ed. Law Rep. 282 (1993).

[4]WDT-Winchester v. Nilsson, 27 Cal. App. 4th 516, 32 Cal. Rptr. 2d 511 (6th Dist. 1994); Rich v. State Bd. of Optometry, 235 Cal. App. 2d 591, 45 Cal. Rptr. 512 (1st Dist. 1965); Madrid v. Justice Court, 52 Cal. App. 3d 819, 125 Cal. Rptr. 348 (5th Dist. 1975).

persuasive that the act should not be interpreted to include what was left out.[5]

§ 180 Legislative debates; opinions and motives of individual legislators or other public officials

Research References

West's Key Number Digest, Statutes ⇐216

While legislative debates may be appropriate sources of information to discover the meaning of statutory language,[1] the court may not assume that a party's intention in sponsoring a bill was same as legislature's intention in passing bill.[2] Debates surrounding the enactment of a bill may illuminate its interpretation, and evidence of such debates is thus admissible and may even consist of an individual legislator's post-enactment reiteration of the discussions, arguments and events preceding passage of a bill, such as those at a committee hearing, but any such recount of a debate merits less weight than extensive committee reports on the bill or a formal record of the debates.[3] To the extent that legislative intent may be gleaned from the statements of a sponsor of a bill, it is only to the extent the statement is consistent with the statutory language and other legislative history.[4] A sponsor's letter of intent, however, is ordinarily not considered,[5] unless it is incorporated into a legislative resolution.[6]

When construing a statute, the courts will not consider

---

[5]Central Delta Water Agency v. State Water Resources Control Bd., 17 Cal. App. 4th 621, 21 Cal. Rptr. 2d 453 (3d Dist. 1993).

[Section 180]

[1]People v. Knowles, 35 Cal. 2d 175, 217 P.2d 1 (1950); Rich v. State Bd. of Optometry, 235 Cal. App. 2d 591, 45 Cal. Rptr. 512 (1st Dist. 1965); Noroian v. Department of Administration, 11 Cal. App. 3d 651, 89 Cal. Rptr. 889 (1st Dist. 1970).

[2]In re First T.D. & Inv., Inc., 253 F.3d 520, 49 Fed. R. Serv. 3d 1174 (9th Cir. 2001).

[3]In re Marriage of Bouquet, 16 Cal. 3d 583, 128 Cal. Rptr. 427, 546 P.2d 1371 (1976).

[4]Dubins v. Regents of University of California, 25 Cal. App. 4th 77, 30 Cal. Rptr. 2d 336, 91 Ed. Law Rep. 638 (1st Dist. 1994), as modified on denial of reh'g, (June 22, 1994).

[5]Malick v. Department of Transportation, 17 Cal. App. 4th 1829, 22 Cal. Rptr. 2d 305 (1st Dist. 1993).

[6]Arcadia Redevelopment Agency v. Ikemoto, 16 Cal. App. 4th 444, 20 Cal. Rptr. 2d 112 (2d Dist. 1993).

ground of the legislation, prior and contemporaneous legislation on the same or closely kindred subjects, and the external and historical facts and conditions which led to its enactment (§ 188). The general policy of the state with respect to a given subject may afford aid in construing statutory provisions relating thereto (§ 189). Although the construction of a statute is a judicial function, where a statute is unclear, a subsequent expression of the legislature bearing upon the intent of the prior statute may be properly considered in determining the effect and meaning of the prior statute (§ 190).

§ 188 History in general

Research References

West's Key Number Digest, Statutes ⇐217

In construing and enforcing a statute the court may consider the object implicit in the history and background of the legislation,[1] prior and contemporaneous legislation on the same or closely kindred subjects,[2] and the external and historical facts and conditions which led to its enactment.[3] Thus, to the extent that uncertainty remains in interpreting statutory language, the wider historical circumstances of the enactment may be considered.[4] However, the specific impetus for a legislative bill does not limit its scope when its text speaks to its subject more broadly; statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of the laws rather than the principal concerns of legislators by which courts are governed. Indeed, when the legislature has made a deliberate choice by selecting broad and unambiguous

---

[Section 188]

[1]In re First T.D. & Inv., Inc., 253 F.3d 520, 49 Fed. R. Serv. 3d 1174 (9th Cir. 2001); Shafer v. Registered Pharmacists Union Local 1172, 16 Cal. 2d 379, 106 P.2d 403 (1940); In re Ryan's Estate, 21 Cal. 2d 498, 133 P.2d 626 (1943).

[2]Los Angeles County v. Frisbie, 19 Cal. 2d 634, 122 P.2d 526 (1942); Stafford v. Realty Bond Service Corp., 39 Cal. 2d 797, 249 P.2d 241 (1952).

[3]Grannis v. Superior Court of City and County of San Francisco, 146 Cal. 245, 79 P. 891 (1905); People v. Ventura Refining Co., 204 Cal. 286, 268 P. 347 (1928).

[4]People v. Allen, 88 Cal. App. 4th 986, 106 Cal. Rptr. 2d 253 (3d Dist. 2001).

statutory language, it is unimportant that the particular application may not have been contemplated.[5]

§ 189 Public and legislative policy

Research References
West's Key Number Digest, Statutes ⇐184, 214

The general policy of the state with respect to a given subject may afford aid in construing statutory provisions relating thereto, where their real meaning, intent, or scope is not clear.[1] Where a provision is phrased in ambiguous language, it may be read and considered in view of the legislative policy affecting the subject as established by the statutory law generally.[2] Any such inquiry, however, is still an effort to discern the intent of the legislature, and it does not sanction a judicial construction predicated upon a perceived policy that is not within the plausible meaning and semantic constraints of the statutory language.[3]

§ 190 Legislative construction of prior statutes

Research References
West's Key Number Digest, Statutes ⇐223.5(9)

Although the construction of a statute is a judicial function, where a statute is unclear, a subsequent expression of the legislature bearing upon the intent of the prior statute may be properly considered in determining the effect and meaning of the prior statute.[1] Declaratory or defining statutes are to be upheld, except with regard to past transac-

---

[5]Khajavi v. Feather River Anesthesia Medical Group, 84 Cal. App. 4th 32, 100 Cal. Rptr. 2d 627 (3d Dist. 2000).

[Section 189]

[1]People v. Stanley, 33 Cal. App. 624, 166 P. 596 (1st Dist. 1917); Stockton Plumbing & Supply Co. v. Wheeler, 68 Cal. App. 592, 229 P. 1020 (3d Dist. 1924).

[2]People v. Kings County Development Co., 48 Cal. App. 72, 191 P. 1004 (3d Dist. 1920).

[3]People v. Drennan, 84 Cal. App. 4th 1349, 101 Cal. Rptr. 2d 584 (3d Dist. 2000).

[Section 190]

[1]Goldman v. Standard Ins. Co., 341 F.3d 1023 (9th Cir. 2003); People v. Tufunga, 21 Cal. 4th 935, 90 Cal. Rptr. 2d 143, 987 P.2d 168 (1999); City of Long Beach v. California Citizens for Neighborhood

tions, as an exercise of the legislative power to enact a law for the future.[2] The recognition of subsequent assertions of legislative intent as bearing on statutory construction is derived from cases in which the meaning of the earlier enactment is unclear. It cannot rest on the notion that the subsequent legislature has authority to interpret the earlier statute, as that is a judicial task. The doctrine's legitimate ground is that, as to unsettled questions concerning rules of decision and absent a good reason to the contrary, the legislature's subsequent resolution should receive deference. It presupposes a case in which the question of meaning is closely balanced, the views of reasonable persons might well diverge, and no private rights have clearly accrued under the earlier statute.[3]

Thus subsequent legislation interpreting a statute cannot change its meaning and effect.[4] It merely supplies an indication of legislative intent which, though not binding on the courts, may be considered together with other factors in arriving at the true intent existing at the time the statute was enacted.[5] In particular, when the legislature declares that an amendment is intended simply to clarify the meaning of a preexisting version of a statute, such a declaration is not determinative as to the meaning of the earlier version.[6] However, the fact that the legislature makes an essential

Empowerment, 111 Cal. App. 4th 302, 3 Cal. Rptr. 3d 473 (2d Dist. 2003), review denied, (Nov. 25, 2003).

[2]People v. Tufunga, 21 Cal. 4th 935, 90 Cal. Rptr. 2d 143, 987 P.2d 168 (1999).

[3]City of Sacramento v. Public Employees' Retirement System, 22 Cal. App. 4th 786, 27 Cal. Rptr. 2d 545 (3d Dist. 1994).

[4]Flewelling v. Board of Trustees of American River Jr. College Dist., Sacramento County, 178 Cal. App. 2d 168, 2 Cal. Rptr. 891 (3d Dist. 1960); Steilberg v. Lackner, 69 Cal. App. 3d 780, 138 Cal. Rptr. 378 (1st Dist. 1977).

[5]Eu v. Chacon, 16 Cal. 3d 465, 128 Cal. Rptr. 1, 546 P.2d 289 (1976); Friends of Lake Arrowhead v. Board of Supervisors, 38 Cal. App. 3d 497, 113 Cal. Rptr. 539 (4th Dist. 1974); Steilberg v. Lackner, 69 Cal. App. 3d 780, 138 Cal. Rptr. 378 (1st Dist. 1977).

[6]People v. Hubbart, 88 Cal. App. 4th 1202, 106 Cal. Rptr. 2d 490 (6th Dist. 2001), cert. denied, 534 U.S. 1143, 122 S. Ct. 1097, 151 L. Ed. 2d 994 (2002); Flewelling v. Board of Trustees of American River Jr. College Dist., Sacramento County, 178 Cal. App. 2d 168, 2 Cal. Rptr. 891 (3d Dist. 1960).

change in the wording of a statute indicates an intention to change the meaning thereof rather than merely interpret it.[7]

[7]In re Todd's Estate, 17 Cal. 2d 270, 109 P.2d 913 (1941); Judson Steel Corp. v. Workers' Comp. Appeals Bd., 22 Cal. 3d 658, 150 Cal. Rptr. 250, 586 P.2d 564 (1978).